

our country, indeed, the free world, and we describe with clarity the consequences of our failing to deal with it and that we demand that those who are critical of what we are doing in fighting the global war on terror explain to us precisely: What would you do differently and how do you believe that would make us safer.

That is the debate I believe we owe the American people. That is the debate I believe we owe the next generations that come after us. And that is the debate we owe those who have worked so hard over the last 200 years to make America the place it is today.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak in morning business until 2:20 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### DEATH WITH DIGNITY ACT

Mr. WYDEN. Mr. President, after the Senate's unfortunate debate about the tragic case of the late Terri Schiavo, I thought the Senate was unlikely to debate this matter any time soon. Unfortunately, it seems there may be another discussion of this matter. In spite of the fact that the American people made it very clear that the Government ought to stay out of these tragic end-of-life matters, new legislation, S. 3788, has been introduced which would, in effect, throw Oregon's Death with Dignity Act into the trash can.

As a result of the introduction of this legislation and my concern that the last thing we need is more Government stepping into these very difficult end-of-life decisions, I am announcing this afternoon that I am placing a hold on S. 3788 which would overturn Oregon's unique Death with Dignity Act and would, in my view, do great damage to the cause of pain management all across our country.

In the past, the Senate has looked at this only in the context of what some describe as assisted suicide. Obviously, there are differences of opinion on this issue. The people in my State have been debating this for well over a decade and twice have made it clear that they believe these decisions ought to be left to the individual and to families trying to cope with these difficult circumstances. They have sent a strong message that death is an intensely personal and private matter and that the Government ought to leave our citizens alone. The Government ought not attempt to override or preempt the individual and family values, religious beliefs, and wishes.

What has been debated in Oregon is not all that different from what was faced in the Senate when there was a discussion about the case of the late Terri Schiavo. I objected on the floor at that time to consideration of the original Schiavo legislation, which was an extraordinary overreach of Federal power, and today I put a hold on S. 3788 which would overturn my State's law.

These are very difficult issues, and many of us are torn with respect to how to handle them. I, for example, opposed physician aid in dying both as an Oregon voter and as a Senator. When my State originally considered the Death with Dignity Act, I worried a great deal about the adequacy of the ballot measure safeguards to protect particularly the poor and the vulnerable. Now we have 8 years of experience with this legislation and, thankfully, my fears with respect to how the vulnerable would fare under this legislation have not been realized, and the realities are that the safeguards in the law have worked quite well in preventing potential abuses.

Had Oregon acted hastily or without thorough examination and debate, I might not be in a position to defend my State's law. But no one can accuse my State of acting precipitously in approving this matter. We have endured several ballot initiatives, court challenges, and, most recently, a challenge that was heard by the U.S. Supreme Court. Each time, the will of a majority of Oregonians prevailed. It is that will of my State's voters which S. 3788 would overturn.

During the 8 years the law has been in effect in my home State of Oregon, the opponents of the law have combed through the statute looking for potential pitfalls. The law still stands because the notion of opponents that there would be abuses and a stampede to Oregon have not been borne out. In fact, and this obviously could not ever be proved, my sense is that there are probably fewer assisted suicides in my home State, the only State with a statute, than there are in other parts of the country. That is because the real effect of Oregon's Death with Dignity Act has been to generate a significant increase in the use of hospice and to generate a significant increase in the number of people who spend their last days at home with family dealing with these issues on their own. So we have not seen this tidal wave of assisted suicides in my home State, but what we have seen as a result of all of the focus on end-of-life care is a significant increase in folks spending their last days through the compassionate services of hospice programs and help with their families at home.

The reality is there is no constitutional issue at stake in this discussion with respect to State rights. Historically, defining medical practice has been a matter left to the States. What is so ironic is that some who come to the floor of the Senate to talk about State rights are essentially saying

they only believe in State rights if they think the State is right.

This is a matter which Oregonians have decided for themselves. It has historically been an issue which has been left to the States.

In my home State, there was a vigorous discussion around dinner tables and at the ballot box, and our State has spoken clearly with respect to where we stand on this difficult issue. I do not believe that a Senator from another State should seek to overturn another State's law based on his personal beliefs.

We are just a couple of months from Election Day in which local, State, and Federal elections will be held. Many States will have numerous ballot measures covering every issue imaginable. Voters need to know they can debate even the most emotionally wrenching issues through the ballot process and have their election results respected. The proposed legislation I have put a hold on, S. 3788, sends voters the message that if Congress doesn't like the conclusion your State comes to through a ballot measure, your vote really doesn't matter. I intend to make sure that the votes of the people of my State, on a matter that has historically been left to them, will count.

You can be opposed to physician aid in dying and be opposed to this legislation as well. The reason I conclude that, is because I believe this proposal will be a huge setback to the cause of pain management in every corner of the country, not just in my home State. Like efforts before it, S. 3788 seeks to undermine my State's law by amending the Controlled Substances Act in order to say that drugs which fall under the Controlled Substances Act cannot be used in physician aid in dying. The Controlled Substances Act, of course, is legislation Congress passed to go after drug kingpins and to make sure that those with access to drugs, including doctors and pharmacists and others, do not distribute them illegally. The penalties in the Controlled Substances Act are substantial. However, the bottom line is the Controlled Substances Act was not meant to throw the will of the people of my State or any other in the trash can with respect to a medical practice involving end-of-life care.

Like past efforts, the legislation I have put a hold on purports to create a safe harbor to protect physicians and others. Sadly, such a safe harbor is meaningless because of the realities patients, families, doctors, pharmacies, and others face when they are trying compassionately to assist a dying patient in that patient's last days. Medicine and the use of controlled substances, particularly in the case of the dying, is an art, not an exact science. It is not as if you can prove scientifically and medically that a dose of a drug in so many milligrams can always relieve pain and half a milligram more is going to result in death. People are different. Each of these medical tragedies is different. The dying often can

withstand doses of controlled substances that would kill a healthy person.

There are many examples that make it clear that interpretations after the fact by law enforcement give physicians great concern with respect to how these drugs are used. Second-guessing will deter physicians, even physicians who are opposed to assisted suicide, from moving into treating pain aggressively.

During the previous congressional effort to throw out my State's law, the *New England Journal of Medicine* editorialized against that attempt out of the very same concern I have reflected today about the impact on pain management. The *New England Journal of Medicine* said:

Many doctors are concerned about the scrutiny they invite when they prescribe or administer controlled substances and they are hypersensitive to drug-seeking behavior in patients. Patients as well as doctors often have exaggerated fears of addiction and the side effects of narcotics. Congress would make this bad situation worse.

That is what independent medical authorities said the last time there was an effort to pass legislation like the new bill, S. 3788, and it holds true as well today.

I have appreciated Senator SMITH's leadership, my colleague from Oregon on the other side of the aisle, who joins me with respect to the concern about pain management. He and I have introduced the Conquering Pain Act to help provide families, patients, and health professionals with assistance so that no patient would be left in excruciating pain waiting for a doctor's office to open up.

The reality is, as we saw during the debate involving the late Terri Schiavo, Americans have dramatically differing views on this issue, and those views are passionately held. But there can be efforts, successful efforts, to bring both sides together on this issue. I mentioned the Conquering Pain Act Senator SMITH and I have sponsored. I also believe there should be changes in the Medicare hospice benefit to extend opportunities for end-of-life care there. Right now, the Medicare law almost forces someone to give up hope for the prospect of recovery in order to get the hospice benefit, and I believe that is unfortunate.

I am almost finished with my remarks. I see my good friend from the State of Kentucky here. I would ask unanimous consent at this time—and see what is convenient for my colleague from Kentucky—for 5 additional minutes to wrap up my remarks, and if that is convenient with the Senator from Kentucky, I would make that unanimous consent request.

The PRESIDING OFFICER (Mr. VOINOVICH). Without objection, it is so ordered.

Mr. WYDEN. Mr. President, again, just to complete that thought, there are ways that both sides in this end-of-life care debate can be brought to-

gether. I have mentioned several. What I think is clear, after the Terri Schiavo discussion, is that the American people don't want the Federal Government butting in, interfering, and preempting the ability of families and those in their last days to make these judgments. For the citizens of my State, the Death With Dignity Act has brought about improvement in many areas and encouraged conversations about a wide variety of end-of-life options. Those conversations probably wouldn't have even taken place if the people of my State hadn't voted for this twice. In my State, the end-of-life process has been decriminalized. Recognizing the deeply personal nature of this, the Federal Government should not decide again, as has been considered before, that this should be the province of the Federal Government and not left to individuals and families.

My State has chosen a unique path. Rather than the bitter and divisive debate over physician aid in dying—which this country would have, once again, if S. 3788 moved forward—I would offer that instead the Senate work together on a bipartisan basis to make the end of life a better period for all Americans.

So consistent with the policy I have held of publishing in the CONGRESSIONAL RECORD a statement whenever I put a hold on a piece of legislation, I am announcing today my intent to object to any unanimous consent agreement concerning S. 3788. The Senate should have learned during the debate over the tragic case of Terri Schiavo that the American people don't want the Government interfering during these very difficult days. S. 3788 would allow just this kind of interference, and that is why I will do everything I can to defend Oregon's law against this congressional overreaching and respect the message the American people sent during the Terri Schiavo debate that there ought to be a right to be left alone.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

#### THE CRASH OF COMAIR FLIGHT 5191

Mr. MCCONNELL. Mr. President, it is difficult to put into words what the citizens of Kentucky are feeling. Nine days ago, tragedy struck the heart of our Commonwealth when Comair Flight 5191 crashed shortly after take-off at Blue Grass Airport, in Lexington, KY. Forty-nine people perished.

This single, devastating event is of course not one story but many. This crash has brought grief into scores of families and countless lives, all over Kentucky and beyond. Holes that cannot be filled have been created in places like Lexington, Georgetown, Somerset, London, Harrodsburg, and Richmond.

Funeral services have been conducted across Kentucky over recent days, and

I know I am joined by all Kentuckians in extending heartfelt sympathy for the families and loved ones of the victims.

After a catastrophe as great as the crash of Comair Flight 5191, sorrow can be overwhelming. Many people in my state are feeling that way now. And the entire state is struggling for answers in the face of such an unexpected tragedy that is so unbearable.

Since the crash I have been learning, as many Kentuckians have, about the lives of the victims, who they were and where they were going that day.

Four Kentuckians on the plane worked for Galls, a Lexington-based company that makes public safety equipment and apparel. Three of them were flying to New Orleans to help deliver new uniforms to New Orleans police officers after Hurricane Katrina.

Jonathan Hooker, 27, and Scarlett Parsley Hooker, 24, spent only hours together as husband and wife before they both boarded Flight 5191 to fly to California for their honeymoon. The Reverend Terry Gabbard married them the night before the flight in a beautiful evening ceremony in Lexington. One week later, he would speak at their funeral.

The deaths of these two newlyweds so soon after starting their lives together devastated many in their hometown of London, Kentucky. Jon had a lot of friends after attending London's North Laurel High School, where he was a star athlete.

He went on to pitch for the University of Kentucky baseball team from 1997 to 2001, and then to work as a professional minor-league baseball player. In the last few months of his life, he helped others as a substance-abuse counselor. He liked to play golf, and worked with a youth baseball league in London.

Scarlett, his wife, was a 2004 graduate of Centre College, in Danville, Kentucky, and was attending the University of Kentucky to pursue a master's degree in communication disorders. An avid swimmer, among the many friends she leaves behind are the members of a local London swim team she helped found: the Barracudas.

My friend Lee Todd, the president of the University of Kentucky, put it well when he said that this young couple "held all the promise that youth and love carry." Because of the tragedy of Flight 5191, we will never get to see that promise fulfilled.

A promise was also snuffed out in Lexington at the same time—the promise of a father to a young son to watch him grow up. Clarence Wayne Fortney II, called C.W. by his friends and 34 years old, died in Flight 5191, leaving behind his wife Sarah and their 16-month-old son Calvin James.

C.W. was flying to Atlanta to report for work as a pilot for AirTran Airlines.

C.W. grew up in Stanton, Kentucky, and always wanted to be a pilot. Both his father and his grandfather were private pilots. When he was 5, his mother